

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of the Commission's Rules)	ET Docket No. 95-183
Regarding the 37.0-38.6 GHz and)	RM-8553
38.6-40.0 GHz Bands)	
)	
Implementation of Section 309(j) of the)	
Communications Act -- Competitive)	PP Docket No. 93-253
Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz)	

U S WEST, INC. REPLY COMMENTS

U S WEST, Inc. ("U S WEST") on behalf of its telecommunications subsidiaries, hereby responds to the comments filed in the above-referenced docket¹ concerning licensing and technical rules for operations in the 37.0-38.6 GHz and 38.6-40.0 GHz bands.² U S WEST limits these reply comments to three important issues raised in the NPRM and in comments filed in this proceeding.

¹ Commenters referenced herein include: Ameritech Corporation ("Ameritech"); Association for Local Telecommunications Services ("ALTS"); AT&T Wireless Services, Inc. ("AT&T"); Bachow and Associates, Inc. ("Bachow"); BizTel, Inc. ("BizTel"); Commco, L.L.C. ("Commco"); DCR Communications, Inc. ("DCR"); Digital Microwave Corporation ("Digital"); GHz Equipment Co., Inc. ("GHz Equipment"); GTE Service Corporation ("GTE"); Harris Corporation-Farion Division ("Harris"); Milliwave Limited Partnership ("Milliwave"); Pacific Bell Mobile Services ("Pacific Bell"); Personal Communications Industry Association ("PCIA"); Telephone and Data Systems, Inc. ("TDS"); Winstar Communications, Inc. ("Winstar").

² In the Matter of Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz, Notice of Proposed Rule Making and Order, ET Docket No. 95-183, RM-8553, PP Docket No. 93-253, FCC 95-500, rel. Dec. 15, 1995 ("NPRM").

I. THE FEDERAL COMMUNICATIONS COMMISSION ("COMMISSION")
SHOULD NOT LIMIT 37/39 GHZ FIXED SERVICE OFFERINGS

In the NPRM, the Commission requested comment on whether it should make the 37 and 39 GHz bands available for point-to-point microwave operations that would provide intermediate links for mobile operations, such as personal communications services ("PCS"), and promote development of wireless local telephone service.³ U S WEST supports this allocation, but encourages the Commission to expand the proposed allocation to allow for flexible fixed use of the spectrum, including point-to-multipoint operations.⁴ As the Commission notes: "Greater flexibility of use is likely to ensure that this spectrum is ultimately used for those services of highest value to the public."⁵

Carriers would be able to utilize their spectrum to provide fixed wireless loop service to rural or less economically attractive areas, for example, if the Commission authorized flexible fixed use of the bands.⁶ The Commission has acknowledged the value of fixed wireless loop as an alternative to wireline service in another spectrum allocation proceeding.⁷ Allowing flexibility in the 37/39 GHz

³ Id. ¶ 1.

⁴ U S WEST believes that use of the 37/39 GHz spectrum will be broader in scope than PCS backhaul links and, accordingly, urges the Commission not to set aside spectrum for PCS but to allow the market to decide the use of the bands. See Winstar at 6; GHz Equipment at 7.

⁵ NPRM ¶ 110.

⁶ Id. ¶ 1. See also Winstar at 7-8; Ameritech at 3.

⁷ In the Matter of Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, Notice of Proposed Rule Making, FCC 96-17, rel. Jan. 25, 1996 ¶¶ 5-7. In this proceeding, U S WEST demonstrated to the Commission the

bands will allow the market to dictate use and will thus encourage technological advances and efficient use of spectrum, all beneficial to the consumer who will be provided with maximum choice.⁸

The Commission should not, however, allow mobile service operations or government space research operations in the bands. Mobile systems will cause interference with fixed systems,⁹ and government operations could disrupt point-to-point communications due to excessive powerflux density limits. Additionally, allowing space research operations presents difficulties in valuing the spectrum subject to auction.¹⁰

II. THE COMMISSION SHOULD NOT LIMIT LOCAL EXCHANGE CARRIER ("LEC") PARTICIPATION IN THE 37/39 GHZ AUCTIONS

The Commission proposes open eligibility for all parties interested in bidding for 37 GHz or 39 GHz spectrum.¹¹ U S WEST endorses this proposal. Two commenters, however, recommend that the Commission restrict the eligibility of LECs. BizTel, while purporting to embrace the Commission's open eligibility approach, insists that it "would clearly be anti-competitive and contrary to the

practical and economical advantages of utilizing fixed wireless loop in remote areas which might otherwise be deprived of service. Comments of U S WEST, filed Feb. 26, 1996 at 4-5.

⁸ See, e.g., Bachow at 8-9; GHz Equipment at 5.

⁹ See, e.g., Harris at 4; PCIA at 4.

¹⁰ See also Winstar at 64; Digital at 3; Pacific Bell at 3.

¹¹ NPRM ¶ 97.

public interest to allow any local exchange service provider with monopoly power to obtain a 37 GHz or 39 GHz license covering any portion of its home operating territory.”¹² According to BizTel, allowing LEC participation in the 37 GHz auction would be akin to thwarting competition in the local services arena.¹³ BizTel proposes that, at a minimum, any LEC with monopoly power in a given basic trading area (“BTA”) should have to certify compliance with the Section 271(c)(2)(B)¹⁴ competitive checklist as a prior condition to auction participation.¹⁵ While less specific, ALTS similarly urges the Commission to “establish safeguards to prevent incumbent LECs from obtaining all of the desirable channel blocks in a given competitive local exchange market and to ensure an opportunity for CLECs to obtain licenses.”¹⁶ Neither commenter provides evidence to support its assertion that LECs will impede competition.

The proposals of BizTel and ALTS are gratuitous, given the Commission’s intention to limit the amount of spectrum any one licensee can acquire: the NPRM proposal limits licensees to six of the 28-paired channel blocks and two of the four-unpaired channel blocks in each BTA in the combined bands.¹⁷ Given this

¹² BizTel at 21.

¹³ Id.

¹⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 88 (1996) (“Telecommunications Act”).

¹⁵ BizTel at 22.

¹⁶ ALTS at 2.

¹⁷ NPRM ¶ 112.

limitation, there is no possibility that a LEC can monopolize a BTA; under the proposed cap a LEC, or any other licensee, can acquire only one-fourth of the available spectrum, at most, in the BTA.

If the Commission were to follow BizTel's logic, the results could be detrimental to customers in rural areas. As discussed above, if the Commission permits flexible fixed use within the 37/39 GHz bands, there will be customer-oriented incentives (i.e., quick and economical deployment) for LECs to provide wireless local loop in rural areas of their service regions. These incentives would not necessarily flow to other telecommunications providers without the same connection to the area. In such instances, BizTel's recommendation would arbitrarily prevent the provision of economical and timely service to the area.

Finally, the proposals to limit LEC participation are contrary to the objectives of the Telecommunications Act: to promote competition, reduce regulation, and encourage the rapid deployment of new telecommunications technologies.¹⁸

III. THE COMMISSION SHOULD SANCTION DISAGGREGATION OF SPECTRUM AND GEOGRAPHIC PARTITIONING

The Commission proposes to license all of the channel blocks in the 37 GHz and 39 GHz bands utilizing BTAs and to auction the BTAs.¹⁹ Several commenters

¹⁸ See Telecommunications Act, 110 Stat. at 56. See also Winstar at 36-37; Milliwave at 32-33.

¹⁹ NPRM ¶¶ 22, 25.

agree with this licensing scheme.²⁰ U S WEST also supports the two proposals, but with some qualification. The auctioning of BTAs in the bands should be undertaken only if the Commission authorizes disaggregation of spectrum and geographic partitioning.²¹

Elsewhere in the NPRM the Commission concludes that “license transfer restrictions may reduce the ability of licensees to put this spectrum to its highest valued use and [it] is therefore not proposing such requirements.”²² For this reason, U S WEST urges the Commission to give 37 GHz and 39 GHz licensees sufficient flexibility to disaggregate their spectrum and partition their licensed service areas, whether it be by lease or sale.²³ Consonant with the Commission’s goals, disaggregation and partitioning allow market forces to drive the valuation of the spectrum. Such practices also encourage efficient use of spectrum and will facilitate market entry by newcomers with limited capital and/or spectrum needs.²⁴

²⁰ See, e.g., TDS at 5-7; Commco at 8-9.

²¹ Under this licensing scheme, U S WEST believes a substantial service showing would be an appropriate construction requirement.

²² NPRM ¶ 97.

²³ See id. ¶ 24. See also Pacific Bell at 6; AT&T at 10; GTE at 5; DCR at 7-8.

²⁴ See DCR at 8. The Commission recognizes the benefits of geographic partitioning. See NPRM ¶¶ 89-90. See also In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd. 5532, 5597-99 ¶¶ 150-52 (1994) (The Commission allows broadband PCS licenses to be geographically partitioned to permit rural telephone companies to hold PCS licenses in their telephone service areas). Here, the Commission should adopt a broader version of that rule to allow various entities, not just rural telephone companies, to take advantage of partitioning.

IV. CONCLUSION

For the foregoing reasons, in crafting its rules for microwave operations in the 37/39 GHz bands, the Commission should permit any fixed services; authorize disaggregation of spectrum and geographic partitioning; and allow LEC participation without restriction.

Respectfully submitted,

U S WEST, Inc.

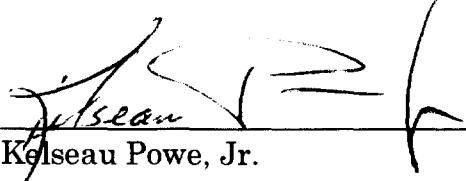
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CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 1st day of April, 1996, I have caused a copy of the foregoing **U S WEST, INC. REPLY COMMENTS** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


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